



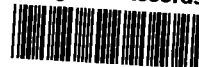
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



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DEC 09 2004

REPLY TO THE ATTENTION OF

S-6J

William Brighton
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Re: Waiver of \$32,280.91 in Interest Costs Assessed under January 21, 1999 CERCLA
Section 122 Administrative Order on Consent, Solutia, Inc. and Monsanto Company,
Docket No. V-W-01-C-662 *Sauget Area 1 site*

Dear Mr. Brighton:

By this letter, the United States Environmental Protection Agency, Region 5 (U.S. EPA) requests that the Department of Justice concur with the Region's recommendation concerning the waiver of \$32,280.91 in interest costs assessed under January 21, 1999 Administrative Order of Consent (AOC) entered into by U.S. EPA and Respondents Solutia, Inc. and Pharmacia (formerly Monsanto Company).

BACKGROUND

On January 21, 1999 U.S. EPA and Solutia, Inc. and Monsanto entered into AOC Docket No. V-W-01-C-662, requiring an RI/FS for Sauget Area One in Sauget, Illinois. The AOC contains an oversight cost payment agreement, requiring the Respondents to pay all oversight costs that are not inconsistent with the NPL. Under the AOC, U.S. EPA is required to send the Respondents a bill for oversight costs on an annual basis.

On November 14, 2001, U.S. EPA sent to Solutia an RI/FS AOC oversight cost invoice for previous two years of costs under the AOC (1999-2000, total cost billed \$857,254). Solutia requested supporting documentation for these two years of costs and an postponement of the 30-day period for payment specified in the AOC to allow time for its review. U.S. EPA agreed to provide cost documentation and the case attorney agreed to an extension to the payment date specified in the AOC. Thereafter, Solutia did not pay the billed amounts pursuant to its belief

that Agency suspended payment until cost documentation was provided.

On April 17, 2002, U.S. EPA sent to Solutia a second oversight bill for 2001 costs under the RI/FS AOC (\$220,904). This bill is subject to the same disputed understanding regarding the payment deadline as the November billing. The Region was still compiling and redacting the Sauget Area One cost documentation package when on December 17, 2003, Solutia filed for bankruptcy. As a result, Solutia has never paid any money towards either of these bills. Thereafter, U.S. EPA filed a proof of claim on November 26, 2004, seeking, among other things, the AOC oversight costs due and owed to the government.

U.S. EPA's efforts to document the costs billed under the AOC, as requested by Solutia, lead to a significant change in the costs sought under the AOC. The original bills sent to Solutia for 1999-2002 totaled \$1,078,158. After a review of the supporting documentation, the Region revised this figure downward to \$868,612. The cost excluded from this revised total will now be sought in the Sauget Area One cost recovery litigation. The new annual bill for 2003 totaled \$82,097, resulting in a new total oversight cost figure of \$950,709.

On August 10, 2004, U.S. EPA issued the new oversight bill, plus the supporting documentation, to Pharmacia (formerly Monsanto), the other signatory to the AOC. Pharmacia reviewed the invoices and documentation and claimed that costs continued to be mischaracterized as oversight costs. The parties discussed these comments and have reached tentative agreement on the appropriate oversight cost figure, \$492,673. Again, the excluded costs are now subject to collection in the Sauget Area One cost recovery litigation.

The only issue remaining concerns the interest charged by the Region on the unpaid amounts assessed in the original bills sent in November, 2001 and April 2002. Pharmacia has filed a dispute under the dispute resolution clause claiming that these interest charges (totaling \$32,280.91) should now be dropped because of the significant change in AOC billing amounts. It also claims collection of interest is inequitable because it was not sent the original bills and that Solutia was given an extension of the payment date until the supporting documentation could be reviewed.

RECOMMENDATION

The Region and Pharmacia's review of the oversight costs in this case based on cost documentation resulted in a significant reduction in the amounts pursued under the Sauget Area One AOC (\$1,078,158 vs. \$492,637). It is clear that the November, 2001 and April 2002 bills significantly overstated oversight costs, so much so that the August 10, 2004 billing can and should be considered an entirely new bill. As a result, interest from the prior bills should be waived. This recommendation is also supported in light of the equities present in the case. Although he did not have authority to do so, it is clear from the record that the case attorney granted an extension to the AOC payment deadline. In addition, although Monsanto/Pharmacia was a Respondent to the AOC, it was not sent the original bills back in November 2001 and April 2002. Only Solutia was sent these bills. Finally, it is clear that other far more significant cost recovery activities must take place in this case. As mentioned, the Region must support

DOJ's efforts in the Area One cost recovery litigation, as well in the Solutia bankruptcy proceedings. In addition, oversight bills under the Area Two RI/FS AOC must be sent out and other Area Two costs must be demanded and collected as well. These costs total well over \$10 million, and the Region's time should not be diverted seeking collection of the relatively small interest cost under these circumstances.

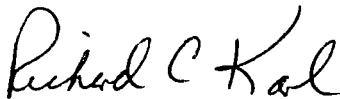
For the reasons set forth above, we request that you concur with the Region's recommendation concerning the waiver of \$32,280.91 in interest costs assessed under January 21, 1999 AOC [Docket No. V-W-01-C-662] entered into by U.S. EPA and Solutia, Inc. and Monsanto Company (now Pharmacia).

CONTACTS

The Region 5 attorney assigned to this matter is Thomas J. Martin, Associate Regional Counsel, Office of Regional Counsel, who can be contacted at (312) 886-4273. The Region 5 technical contact assigned to the case is Nabil Fayoumi, Remedial Project Manager, Office of Superfund. Mr. Fayoumi can be contacted at (312) 886-6840. The Department of Justice attorney working on this matter is Karen Torrent.

We appreciate your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Richard C. Karl". The signature is written in a cursive, flowing style.

Richard C. Karl, Director
Superfund Division

cc: Susan Bromm, Director
Office of Site Remediation Enforcement
U. S. EPA - Ariel Rios Bldg.
1200 Pennsylvania Ave.
Washington, DC 20004

Karen Torrent
Environment and Natural Resources Division
Environmental Enforcement Section
Department of Justice
1425 New York Ave.
Washington, DC 20005

bcc: Martin (ORC)

Fayoumi (Superfund)

Hackley (Financial Management) ✓